IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.2299 OF 2004

Mukund Moreshwar Gharat ...Petitioner

V/s.

The State of Maharashtra ...Respondent

Shri. Rajan Salvi for the Petitioner.
Ms. Rajshree Gadhvi A.P.P. for the Respondent.

CORAM : A.S. OKA, J.
DATED : JULY 07, 2005.

P.C.:

1. The challenge in this Petition which is filed through Jail is to the order dated 18th June, 2004 passed by the competent authority rejecting the Application for furlough leave filed by the Petitioner. The ground given for rejection is that the villagers are agitating against the Applicant and therefore, if the Applicant is enlarged on furlough leave, law and order problem will be created in the village.

2. The police report dated 17th October, 2003 on the basis of which impugned order is passed, records that the Petitioner has committed a very brutal crime under section 376 of the Indian Penal Code and has killed the victim and thrown her dead body in a well. Only observation made in the said report is that if the Petitoner is granted benefit of furlough leave, there will be law and order situation created in the village

as the residents of the village are agitated against the Applicant. The apprehension expressed in the report is without any material. The report does not disclose that statements of the villagers were recorded. There is no material collected to show that the public peace and tranquility in the area will be affected. Only on mere apprehension expressed by the police, the Application for furlough leave cannot be rejected. In view of this position, rejection of the Application is unsustainable.

3. Hence, the Petition is disposed of by passing following order:

: O R D E R :

i) The order dated 18th June, 2004 is quashed and set aside and the Application for furlough leave by the Petitioner shall be decided afresh by the competent authority within a period of eight weeks from today in the light of the observations made in this judgment.

ii) Copy of this order be forwarded to the Petitioner.

JUDGE